NO. 46711-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ROBERT E. ACKERSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
CLALLAM COUNTY, STATE OF WASHINGTON
Superior Court No. 13-1-00203-4

BRIEF OF RESPONDENT

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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether Ackerson's Due Process and Equal Protection claims are ripe for review when the State has not yet attempted to enforce payment of any LFO's?
2. Whether DOC's violation hearings process violates Ackerson's Due Process and Equal Protection Rights?
3. Whether pre-conviction in-patient drug treatment is confinement.
4. Whether Equal Protections and Double Jeopardy require that the court grant credit for time spent in in-patient drug treatment?

II. STATEMENT OF THE CASE

On June 10, 2013, the State filed an information charging Robert Ackerson with the crime of possession of a controlled substance, methamphetamine. CP 39. On July 29, 2013, Ackerson voluntarily entered a drug court contract under which he would be required to undergo an assessment evaluation and complete all required program services as ordered to the satisfaction of the court and treatment provider. CP 31. Ackerson entered the agreement with the understanding that he could opt out of the contract within 30 days without consequences. CP 32 (paragraph 15).

The State disputes Ackerson's statement of facts in regards to the date of the drug court contract and order to report to Olympic Person Growth, cited as CP 30–31. See Appellant Br. at 3. The State also disputes

Ackerson's statement that he entered a contract for a DOSA, cited as RP 12 and CP 31. *Id.*

The order for release was entered on July 29, 2013 and required the defendant to immediately report to Klallam Counseling on July 30, 2013. CP 30. On Sept. 18, 2014, the court terminated Ackerson's drug court agreement and remanded to the trial court for a stipulated trial pursuant to the agreement. CP 25, 33. Ackerson was found guilty and was sentenced to 15 months prison on Oct. 2, 2014. CP 10, 14, 24. Ackerson asked for credit for time served for the time he spent in in-patient drug treatment. CP 21. The court declined to grant credit for time spent in in-patient drug treatment. CP 28.

The court ordered legal financial obligations (LFOs) after discussing Ackerson's financial resources and ability to work after release from custody. RP 30. The court set his monthly payment at $25 per month due to Ackerson's financial resources and perceived future ability to pay. RP 30.

III. ARGUMENT

Ackerson argues that the Department of Corrections (DOC) could incarcerate Ackerson for non-payment of LFOs without due process because the statutes governing the adjudication of DOC violations do not have constitutional safeguards. Further, due to the absence of constitutional safeguards in the DOC violation process, Ackerson argues that supervision of

LFOs by the court versus DOC results in disparate treatment between similarly situated persons.

Additionally, Ackerson argues on appeal that pre-sentence in-patient treatment is confinement and that Equal Protections and Double Jeopardy require that credit for in-patient treatment be granted towards confinement.

A. ACKERSON'S CLAIM IS NOT RIPE FOR REVIEW BECAUSE THE STATE HAS NOT SOUGHT TO ENFORCE PAYMENT OF LFOs.

Ackerson's claim is not ripe for review. "[G]enerally challenges to orders establishing legal financial sentencing conditions that do not limit a defendant's liberty are not ripe for review until the State attempts to curtail a defendant's liberty by enforcing them." *State v. Lundy*, 176 Wn. App. 96, 108, 308 P.3d 755 (2013).

The Washington Supreme Court pointed out as follows:

> The Court of Appeals here correctly relied on a Second Circuit decision, stating:[c]onstitutional principles will be implicated ... only if the government seeks to enforce collection of the assessments " 'at a time when [the defendant is] unable, through no fault of his own, to comply.' " ..... It is at the point of enforced collection ..., where an indigent may be faced with the alternatives of payment or imprisonment, that he "may assert a constitutional objection on the ground of his indigency."*Curry*, 62 Wash.App. at 681–82, 814 P.2d 1252 (quoting *United States v. Pagan*, 785 F.2d 378, 381–82 (2d Cir.), cert. denied, 479 U.S. 1017, 107 S.Ct. 667, 93 L.Ed.2d 719 (1986)).

State v. Curry, 118 Wn.2d 911, 917, 829 P.2d 166 (1992); *see also State v. Blank*, 131 Wn.2d 230, 241, 930 P.2d 1213 (1997); *State v. Ziegenfuss*, 118

Wn. App. 110, 113, 74 P.3d 1205 (2003).

Here, there is no record that the State had made any attempt to curtail Ackerson's liberty by enforcing the trial court's order for LFOs. Further, Ackerson has not been denied access to counsel at a community custody violation hearing. *See Ziegenfuss*, 118 Wn. App. at 116.

Therefore, Ackerson's claim is not ripe for review and Ackerson's appeal on these issues should be dismissed.

B. THE IMPOSITION OF LFOS DOES NOT VIOLATE DUE PROCESS AND EQUAL PROTECTION RIGHTS BECAUSE THE DOC HEARINGS PROCESS TO ENFORCE LFOS HAS CONSTITUTIONAL SAFEGAURDS.

Ackerson argues that DOC may imprison him for failing to pay legal financial obligations without due process or an opportunity to show such a violation could be unwillful.

"Constitutional issues are issues of law, which we review de novo." *Dellen Wood Products, Inc. v. Washington State Dep't of Labor & Indus.*, 179 Wn. App. 601, 626–27, 319 P.3d 847 *review denied*, 180 Wn.2d 1023, 328 P.3d 902 (2014) (citing *State v. Blilie*, 132 Wn.2d 484, 489, 939 P.2d 691 (1997)).

Here, this issue raised by Ackerson has already been decided in *State v. Ziegenfuss* where Ziegenfuss argued that "the DOC procedures for adjudication are unconstitutional, because indigent offenders are not provided

the safeguards required by the Constitution to protect against punishment for non-willful failure to pay legal financial obligations." 118 Wn. App. 110, 113, 74 P.3d 1205 (2003).

The *Ziegenfuss* Court held that "[t]he regulations governing community custody violation hearings appear to meet these requirements." 118 Wn. App. at 114 (citing WAC 137-104-050 (1), (2), (5)–(8), (10), and WAC 137-104-060 (3), (4), (8)–(10)). The *Ziegenfuss* Court held the DOC regulations are consistent with due process because they "permit[] a hearing officer to 'receive relevant evidence including hearsay evidence' and to '[q]uestion witnesses called by the parties in an impartial manner to elicit any facts deemed necessary to fairly and adequately decide the matter,' and permit[] the offender to rebut the State's evidence." 118 Wn. App. at 115 (citing WAC 137-104-050(15)(e), (f)).

> The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:
>
> (7) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737.
>
> (8) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

RCW 9.94A.6332 (7), (8).

Ackerson points out that RCW 9.94A.6333, unlike RCW 9.94.737,

does contain constitutional safeguards but only applies to offenders supervised by the court rather than DOC.

There are other statutes that come into play regarding the payment of LFOs and supervision of the appellant notwithstanding RCW 9.94A.737. For example, RCW 10.01.160(4) gives an offender direct recourse to avoid incarceration for non-payment of LFOs imposed in a judgment and sentence:

> A defendant who has been ordered to pay costs and who is not in contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof.
>
> If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

RCW 10.01.160 (4).

"RCW 10.01.160, the statute codifying Washington's court costs and fee structure, meets the *Curry* requirements." *State v. Lundy*, 176 Wn. App. 96, 104, 308 P.3d 755, 759 (2013) (referring to *State v. Curry*, 118 Wn.2d 911, 915–16, 829 P.2d 166 (1992)).

Finally, Ackerson argues his Equal Rights are violated because, unlike offenders supervised by the court, offenders supervised by DOC can be incarcerated for nonpayment of LFO's without regard to whether nonpayment is willful or not.

The *Ziegenfuss* Court addressed this as well and held that "Ziegenfuss' conclusion that these safeguards can be provided only in a judicial adjudication, however, is incorrect. As described above, the procedural safeguards due in a community custody violation hearing can be provided in administrative hearings." 118 Wn. App. at 115.

The DOC violation process to enforce payment of LFO's satisfies due process. Further, there is no disparate treatment between those supervised by DOC rather than the Court because DOC violation process also satisfies due process. Therefore, Ackerson's Due Process and Equal Rights challenges fail and this Court should affirm.

C. ACKERSON IS NOT ENTITLED TO CREDIT AGAINST INCARCERATION FOR TIME SPENT IN PRE-SENTENCE IN-PATIENT TREATMENT.

"Whether a trial court has exceeded its statutory authority under the SRA is an issue of law, which we review independently." *State v. Hale*, 94 Wn. App. 46, 53, 971 P.2d 88 (1999) (citing *State v. Bernhard*, 108 Wn.2d 527, 543, 741 P.2d 1 (1987), *overruled on other grounds*, *State v. Shove*, 113 Wn.2d 83, 88, 776 P.2d 132 (1989)). Whether an offender is entitled to credit for time served is a question of law subject to de novo review. *State v. Swiqer*, 159 Wn.2d 224, 227, 149 P.3d 372 (2006).

Ackerson argues that the trial court erred by not granting credit for

time spent in voluntary pre-conviction in-patient drug treatment towards confinement.

1. **Under *State v. Hale*, a court does not have authority to grant credit for in-patient drug treatment towards confinement.**

"A sentencing court must give a felon credit for all confinement time served before sentencing in connection with the offense for which the felon was convicted. RCW 9.94A.120(16). But the SRA does not grant trial courts authority to credit drug treatment against *confinement time* or community service." *Hale*, 94 Wn. App. 54–55 (emphasis added).

The *Hale* Court's rationale was that "[a] sentencing court has 'discretion in sentencing only where the SRA so authorize[s.]'" *Hale*, 94 Wn. App. at 55 (citing *State v. Shove*, 113 Wn.2d 83, 89, 776 P.2d 132 (1989)). "We 'generally do not imply authority where it is not necessary to carry out powers expressly granted[,]' especially where the 'general structure and purpose of the SRA limits the trial court's sentencing discretion and requires determinate sentences.'" *Hale*, 94 Wn. App. at 55 (citing *State v. DeBello*, 92 Wash.App. 723, 728, 964 P.2d 1192 (1998)).

2. **The statutory definitions of total and partial confinement do not include in-patient drug treatment.**

"Statutory interpretation involves questions of law that we review de novo." *State v. Jacobs*, 154 Wn. 2d 596, 600, 115 P.3d 281, 283 (2005) (citing *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43

P.3d 4 (2002)).

a. Confinement does not include residential drug treatment.

"In construing a statute, the court's objective is to determine the legislature's intent." *Id.* "To determine legislative intent, we look first to the language of the statute. Plain language does not require construction." *State v. Van Woerden*, 93 Wn. App. 110, 116, 967 P.2d 14 (1998) (citing *State v. Wilson*, 125 Wn.2d 212, 216, 883 P.2d 320 (1994)). "[C]riminal statutes are given a strict and literal interpretation. *Id.* (citing *Wilson,* 125 Wn.2d at 216–17).

"[S]tatutes should be construed to effect their purpose and unlikely, absurd or strained consequences should be avoided." *State v. Fjermestad*, 114 Wn.2d 828, 835, 791 P.2d 897 (1990) (citing *State v. Stannard*, 109 Wn.2d 29, 742 P.2d 1244 (1987)).

"'Confinement' means total or partial confinement." RCW 9.94A.030 (8). "'Total confinement' means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060." RCW 9.94A.030 (51).

> "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court or home detention has been ordered by the department as part of the parenting program, in an

> approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

RCW 9.94A.030 (35).

Although "confinement" is defined to include work release, home detention, and work crew, chemical dependency treatment is not one the alternatives included.

b. The purpose of confinement is to confine.

A key component of the definitions of confinement, total or partial, is that whichever means is used, the purpose is *to confine*.

The purpose of in-patient drug treatment is not to confine, but to treat a drug problem. Under a drug court contract, a person may opt out voluntarily within 30 days with no consequences. CP 32. A person is not confined when free to leave. Rather, the nature of in-patient drug treatment pursuant to a drug court contract is entirely voluntarily, therapeutic, and rehabilitative.

The purpose of confinement is punitive. "Though a sentence imposed pursuant to the SRA might present a felony defendant with the opportunity to improve himself, rehabilitation is not a justification for sentencing under the SRA." *Harris v. Charles*, 171 Wn.2d 455, 465, 256 P.3d 328, 335 (2011) (citing *State v. Barnes*, 117 Wn.2d 701, 711, 818 P.2d 1088 (1991); *see also*

RCW 9.94A.010 (purposes of the SRA)).

Ackerson cites to *State v. Medina* arguing that the *Medina* court equated partial confinement to "residence". *See* Appellant Br. at 8 (citing *State v. Medina*, 180 Wn.2d 282, 289, 324 P.3d 682 (2014)). Ackerson concludes that residential treatment is total confinement under RCW 9.94A.030 (51).

Ackerson's reading of *Medina* is incorrect because regardless of whether the order to remain at CCAP was for 6 or 8 hours a day, the *Medina* Court still held that the CCAP program did not meet the statutory definition of confinement. *State v. Medina*, 180 Wn.2d 282, 289, 324 P.3d 682 (2014).

> By extension, we do not think that participation in the educational, counseling, and service-oriented programs entailed in CCAP meets the statutory definition of "confinement." Participation in these programs is similar to reporting for work or school—clearly, the CCAP facility is not a residence.

Id.

c. There is no record showing Ackerson was confined while in residential drug treatment.

On direct appeal the scope of review is limited to matters in the trial record. *State v. Johnson*, 180 Wn. App. 318, 324, 327 P.3d 704 (2014) (citing *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995)).

Here, there is no record showing that Ackerson was confined while participating in residential/in-patient drug treatment. There is no record

showing that the facility where Ackerson received in-patient treatment services was a lockdown facility which would restrain Ackerson from leaving on his own volition.

Therefore, because the definitions of confinement do not include in-patient treatment and there is no evidence Ackerson was confined, this Court should affirm the sentence.

3. Ackerson's reading of *Hale* and interpretation of the meaning of confinement leads to strained or absurd results.

Ackerson argues that *Hale* is not applicable because the *Hale* Court held "that there was no statutory authority to grant credit for time served in-patient *after* sentencing" while in this case, the drug treatment occurred before sentencing. Appellant Br. at 7.

Ackerson's reading of *Hale* and interpretation of the meanings of confinement lead to constrained or absurd results. *Hale* certainly makes it clear that the SRA does not give the court authority to sentence an offender to prison and then order the offender to do in-patient drug treatment first and then give credit towards the prison term for completing the drug treatment.

However, it doesn't follow that the SRA authorizes a court to *allow* an offender to *voluntarily* do in-patient treatment *before* sentencing, and then give credit for it towards a prison term imposed after being sentenced. The illegal result would be the same: credit for drug treatment towards

confinement but with the additional factor that the "confinement" was voluntary or self-imposed.

It doesn't make sense that where the SRA precludes credit for court ordered in-patient treatment completed after sentencing, it would allow credit for the same treatment completed before sentencing. Under Ackerson's analysis, this would allow a court to arrive at the same illegal result in *Hale* by simply side-stepping the timing issue. The court could simply take a plea of guilty and then delay sentencing on the condition that defendant complete pre-sentence in-patient treatment and then at sentencing grant credit for the time in treatment.

Moreover, this would also allow an offender to unilaterally reduce his own sentence prior to sentencing simply by checking into an in-patient treatment facility. The court imposes sentences, not the offender. RCW 9.94A.500.

The point of *Hale* is not the timing of when the treatment occurs—before or after sentencing. The *Hale* Court flatly stated that the "SRA does not grant trial courts authority to credit drug treatment against confinement time or community service." *State v. Hale*, 94 Wn. App. 46, 55, 971 P.2d 88 (1999).

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4. Ackerson's reading of *Hale* and interpretation of the meaning of confinement would turn lawful sentences into indeterminate sentences.

"Washington sentencing laws are structured as a system of determinate sentencing." *State v. Shove*, 113 Wn.2d 83, 86, 776 P.2d 132 (1989).

> Under the Sentencing Reform Act of 1981 (SRA), RCW 9.94A, a trial court is directed to impose on those convicted of crimes a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a fine or restitution.

Id.; *see also* RCW 9.94A.030 (18).

"The court may impose any sentence within the range that it deems appropriate. All standard sentence ranges are expressed in terms of total confinement." RCW 9.94A.530 (1).

Here, Ackerson's argument that residential chemical dependency treatment is total confinement would result in indeterminate sentencing and sentences exceeding standard sentence ranges without authority. For example, suppose an offender with an offender score of 8 is sentenced to 24 months prison, the high end of a standard sentence range, for possession of a controlled substance followed by a 12 month term of community custody and in-patient chemical dependency treatment if recommended pursuant to an evaluation. *See* RCW 9.94A.517, RCW 9.94A.518, RCW 9.94A.702.

Such a sentence would be illegal under Ackerson's definition of total confinement. First, the sentence would be indeterminate as the length of in-patient treatment (further total confinement) would ultimately be determined by the treatment evaluator's treatment recommendation sometime after the 24 month prison sentence is served. The evaluator may recommend in-patient treatment resulting in further confinement or out-patient treatment or none at all.

Second, any period of in-patient drug treatment recommended (further confinement) after the 24 month prison sentence is served would result in a sentence of total confinement exceeding the high end of the standard range.

Ackerson's interpretation of total confinement would have the effect of limiting the discretion of the court to sentence within the standard range and could make it impossible for the court to sentence an offender to an appropriate determinate sentence and require drug treatment during community custody.

5. Ackerson's definition of total confinement as including voluntary in-patient drug treatment is not supported by case law.

"[F]or purposes of requiring credit for nonjail time, our case law reveals a constitutional distinction between liberty restrictions equal to time spent in jail or prison . . . and less substantial liberty curtailments." *Harris v. Charles*, 171 Wn. 2d 455, 471, 256 P.3d 328 (2011) (citing *In re Pers.*

Restraint of Knapp, 102 Wn.2d 466, 475, 687 P.2d 1145 (1984); *In re Pers. Restraint of Phelan*, 97 Wn.2d 590, 597–98, 647 P.2d 1026 (1982)).

Ackerson's argument that in-patient treatment is confinement fails because it assumes that subjecting oneself voluntarily to drug treatment (*See* CP 34) prior to conviction is equivalent to court imposed confinement time.

Inherent in the concept of confinement is that it is court-imposed, not voluntary or self-imposed. Ackerson's definition of confinement would allow an offender to effectually reduce their own sentence and avoid punishment before they are sentenced simply by entering in-patient treatment. An offender could enter *multiple* stays of in-patient treatment, or for that matter, enter into long term in-patient treatment and then demand credit when sentenced. The court imposes sentences, not the offender. RCW 9.94A.500.

A drug court agreement is voluntarily entered with the expectation that the participant will complete treatment in accordance with the recommendations of a treatment provider. CP 31. The agreement is not court imposed and is considered as a diversion agreement or informal deferred prosecution with a benefit of dismissal of a case in return for successful completion of the program. *See State v. Cassill-Skilton*, 122 Wn. App. 652, 656–58, 94 P.3d 407 (2004); *State v. Drum*, 143 Wn. App. 608, 619, 181 P.3d 18 (2008).

Here, Ackerson was not compelled or ordered by the court to enter the

drug court contract as a diversion opportunity. Rather, the drug court agreement by its very terms requires that the agreement be entered voluntarily. CP 31, 34. Thus Ackerson voluntarily entered the agreement and recommended treatment and was also free to voluntarily opt out of the contract within 30 days without consequences. CP 32. Treatment pursuant to a drug court agreement is clearly not a "liberty restriction[] equal to time spent in jail or prison." *Harris*, 171 Wn. 2d at 471.

Conclusion

Under *State v. Hale* and the SRA, the sentencing court has no authority to credit in-patient drug treatment towards confinement time. The statutory definitions of confinement do not include in-patient drug treatment. Drug treatment is purely rehabilitative and inconsistent with the purpose of confinement. Moreover, there is no record that Ackerson was confined at all as his participation in drug treatment was completely voluntary. Finally, Ackerson's reading of Hale and interpretation of confinement leads to strained or absurd results which are inconsistent with the purpose of the SRA and not supported by case law.

Therefore, this Court should affirm the sentence and deny the request for credit for in-patient drug treatment towards prison time imposed.

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D. EQUAL PROTECTIONS AND DOUBLE JEOPARDY DO NOT REQUIRE THAT ACKERSON RECEIVE CREDIT FOR TIME IN RESIDENTIAL DRUG TREATMENT.

Ackerson claims that failure to grant credit for time spent in drug treatment violates his equal protection rights because there is no rational difference between the Olympic program and any other 24 hour confinement. Appellant Br. at 9. Additionally, Ackerson claims that because he may have to do in-patient treatment again if ordered by DOC, then he will have served the same punishment twice which violates double jeopardy. Appellant Br. at 10.

The *Harris* Court, acknowledged that "equal protection and double jeopardy demand that all defendants receive credit for time spent in *incarceration* prior to sentencing." *Harris v. Charles*, 171 Wn.2d 455, 470, 256 P.3d 328 (2011) (citing *Reanier v. Smith*, 83 Wn.2d 342, 351–52, 517 P.2d 949 (1974)) (emphasis added).

To establish an equal protections violation as alleged, it is Ackerson's burden to show that failure to grant credit for in-patient treatment creates an arbitrary classification that is not rationally related to a legitimate government interest. *Harris*, 171 Wn. 2d at 463. To do this, Ackerson must establish that in-patient drug treatment is incarceration in the first place.

Additionally, to establish a double jeopardy violation, Ackerson has

the burden to establish that in-patient drug treatment is so punitive in effect that it negates its non-punitive purpose or intent. *Harris*, 171 Wn.2d at 470 (citing *State v. Catlett*, 133 Wn.2d 355, 367–68, 945 P.2d 700 (1997)); *see also State v. Medina*, 180 Wn.2d 282, 294, 324 P.3d 682 (2014).

Under *Harris*, electronic home monitoring (EHM), although a statutory form of confinement, is not necessarily incarceration for equal protection and double jeopardy purposes. *Id.* at 470–73. Additionally, where the alleged confinement is clearly rehabilitative, rather than punitive, there is no incarceration which violates double jeopardy. *See Medina* 180 Wn.2d at 294.

Here, Ackerson has not established that in-patient drug treatment is incarceration in the constitutional sense or even by statute. Further, Ackerson has not established that his in-patient drug treatment was more punitive than either EHM (*Harris*) or court ordered participation in CCAP (*Medina*) or punitive at all.

In-patient drug treatment is a not a statutory form of confinement as is EHM and it is certainly not incarceration. *See* discussion *supra* Part C.2.a. The purpose of drug treatment is rehabilitative, not punitive, especially when it is voluntary. Further, the purpose or effect of in-patient drug treatment is not so punitive as to negate its intent or purpose. *See Harris*, 171 Wn.2d at 467.

Equal protections does not require credit for in-patient drug treatment because it is not incarceration and double jeopardy does require credit because drug treatment is clearly rehabilitative. Further, Ackerson has not established that in-patient drug treatment is punishment at all. Ackerson has not met his burden to establish an equal protection or double jeopardy violation.

Therefore, this Court should affirm the sentence.

IV. CONCLUSION

Ackerson's claim that his due process and equal protection rights have been violated due to the imposition of LFOs is not ripe for review as the State has not sought to enforce the judgment. The DOC violation hearings process meets the constitutional safeguards and provides Ackerson with due process as does the court violation process. Therefore, Ackerson's due process and equal protections claims fail on this issue.

Under *State v. Hale*, Ackerson the court does not have authority to credit in-patient drug treatment towards confinement time. Further, the statutory definitions of confinement do not include in-patient drug treatment. Drug treatment is rehabilitative rather than punitive and is not consistent with the purpose of confinement. There is no record Ackerson was confined while in drug treatment, his participation was voluntary, and he was free to opt out. Furthermore, Ackerson's definition of confinement leads to

constrained and absurd results which would defeat the purposes of the SRA of determinate sentencing and limiting sentencing discretion.

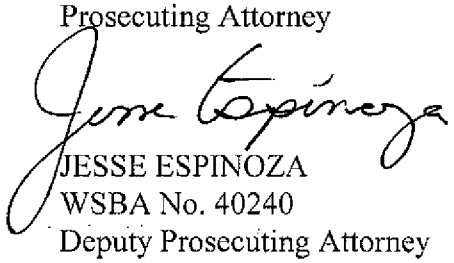
Finally, voluntary in-patient drug treatment is not incarceration or punishment for purposes of equal protections or double jeopardy.

For the foregoing reasons, Ackerson's sentence should be affirmed.

Respectfully submitted this 8th day of May, 2015.

Respectfully submitted,

MARK B. NICHOLS
Prosecuting Attorney



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Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

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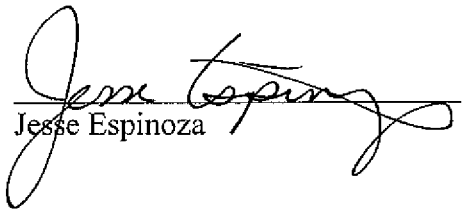

Jesse Espinoza

DOCUMENT I

CLALLAM COUNTY PROSECUTOR

May 08, 2015 - 4:50 PM

Transmittal Letter

Document Uploaded: 2-467119-Respondent's Brief.pdf

Case Name: State of Washington, Respondent, v. Robert E. Ackerson, Appellant.
Court of Appeals Case Number: 46711-9

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Respondent's__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

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